Supreme Court, U. S.
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NO. 75-1355

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.;

Appellants,

vs.

KAREN HEIN, ET AL.

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Opinion Below

The opinion of a panel of three judges of the United States District Court of the Southern District of Iowa is reported at 402 F. Supp. 398 and appears as Appendix A and B, pp. 1a-25a respectively, of Jurisdictional Statement filed herein by Earl Butz, Secretary of Agriculture, Appellant, on March 5, 1976.

Jurisdiction

The order of the three-judge panel convened herein enjoined Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa from enforcing it's statewide regulation which deducted from income a "training allowance" for

transportation expenses allotted to food stamp recipients under an approved State Individual Education Training Plan for recipients in the Aid to Dependent Children Program (ADC), and enjoined the Secretary of Agriculture from enforcing a like regulation 7 C.F.R. 271.3(c)(1)(iii)(f) on the ground that said State and Federal regulations conflict with the Food Stamp Act and deny due process and equal protection under the Federal Constitution. The judgment order was entered October 10, 1975, and appears in the Jurisdictional Statement of Appellant Earl Butz, as Exhibits A and B, pp. 1a-25a.

A notice of appeal to this Court was filed by these Appellants on the 8th day of December, 1975, copy of which appears as Appendix A infra, pp. 1a. On February 2, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including March 7, 1976, and on March 2, 1976, granted a further extension of time to and including March 22, 1976.

Jurisdiction is conferred on this Court by 28 U.S.C. 1253 which permits a direct appeal by any party against whom an order for a permanent injunction was entered in a civil action required to be heard by a District Court of three judges.

This Court previously assumed jurisdiction of this case, then captioned as Kevin J. Burns, Commissioner, et al., vs. Karen Hein, et al., Sup. Ct. 73-1882. In the order being appealed from at that time, the three-judge panel had rejected the motion to interplead the Federal Government. Upon remand, Earl Butz, Secretary of Agriculture, was joined and the judgment now sought for review is entered against both the Commissioner of the Department of Social Services of the State of Iowa and the Secretary of Agriculture.

Questions Presented

I. Whether 7 C.F.R. 271.3(c)(1)(iii)(f), and the analogous Iowa regulations, Iowa Department of Social Services Manual, VII-

3-16(d), which disallows an itemized deduction for training transportation expenses for purposes of computing the income of food stamp recipients, conflicts with the Food Stamp Act or denies equal protection or due process in view of 7 C.F.R. 271.3(c)(1)(iii)(a), and Iowa's analogous regulation, which allow ten percentum of the training allowance, including transportation expense, as a uniform national standard?

II. Does this order contravene the Eleventh Amendment?

Statement of the Case

The Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, et al., adopt the Statement in the Jurisdictional Statement filed herein by the Appellant, Earl Butz, Secretary of Agriculture, as their statement except the provisions in the Iowa Statute creating the Iowa Individual Education and Training Plan are in Chapter 249C, 1973 Code of Iowa.

Pertinent Federal and State Laws and Regulations appear as Appendix B, pp 2a, *infra.*

THE QUESTIONS ARE SUBSTANTIAL

To permit the decision of the District Court to set aside a considered and studied judgmental administrative decision is an undue interference with the function of public officials charged with the administration of the Food Stamp Program. If permitted to stand, it could serve as a dangerous precedent in the administration of other State or Federally created programs.

In the past, this Court has granted petitions for certiorari in cases because of "the gravity of this holding to the administration of the tax laws, "*Rothensies v. Electric Battery Co.* (1946) 329 U.S. 296. 67 S. Ct. 271; and "Because of the importance of the question to the

proper administration of the revenue laws, we granted certiorari in all three cases," *C.I.T. v. Hansen* (1959) 79 S. CT. 1270, 360 U.S. 446; and the case in which were "decided important questions concerning the power of the war department," *Patterson v. Lamb* (1946) 329 U.S. 539, because of the "importance of the decision to the utilization of the public lands" *United States v. Coleman* (1968) 390 U.S. 599, 601; and "because of an apparent conflict on the Eleventh Amendment issue with the decision of the Court of Appeals. . ." *Edelman v. Jordon* (1973) 415 U.S. 651, 658.

Appellee Hein and her class are recipients of Aid to Families with Dependent Children (ADC) cash grants, although that fact does not show on the face of the Decision. As such, they are automatically eligible to participate in the Food Stamp Program and automatically entitled to make application to participate in Iowa's Individual Education and Training Plan.[1]

In view of the various State and Federal training and work programs which are attached to the walfare programs, and in view of the fact two other U.S. District Courts have reached opposite conclusions of the regulation struck down here, it appears that this question will be re-occurring in subsequent litigation until resolved by this Court. In *Chek v. Butz* (May 25, 1975) No. D. Calif., now on appeal to the Court of Appeals for the Ninth Circuit,[2] the challenged regulation was declared valid while in *Turchin v. Butz* (Dec. 31, 1975) D.C. Minn. 44 L.W. 2329, that Court held it invalid, citing this case, *Hein v. Burns*.

In a student loan case *Thomas v. Butz*, (Feb., 1976) U.S. Ariz. Civ.-73-336-Phx.-Cam. relied on *Hein*. It is to be appealed.

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[1]The Iowa legislature authorized this State Program in 1969 for individuals upon public assistance, the provisions of which appear in Ch. 249C, 1975 Code of Iowa. (Appendix p 5a, *infra*.) Iowa receives some federal funds through Title XX of the Soc. Sec. Act as explained in Appellant Butz' Jur. St. pp. 10-11.

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[2]No. 75-2843. Reply brief filed Mar. 4, 1976. Case awaiting hearing date. Dist. Ct. opinion not published.

I

THE REGULATION DOES NOT VIOLATE THE FOOD STAMP ACT AND DOES NOT VIOLATE THE DUE PROCESS NOR EQUAL PROTECTION PROVISIONS OF THE FEDERAL CONSTITUTION.

The offending regulation does not conflict with any express language in the Food Stamp Act and thus *Shea v. Vialpando* 416 U.S. 251 cited by the District Court (Jur. St. Butz, p. 15a) is not applicable. In *Shea* the decision turned on the term "any" appearing in §402(a)(7) of the Social Security Act.

It will be seen that the offending regulation, 7 C.F.R. 271.3(c)(1)(iii)(f), "deductions" when read together with the pertinent regulation 271.3(c)(1)(iii)(a), "exemptions", in the light of the administrative explanation (all of which the District Court failed to consider), does not conflict with the purpose of the Food Stamp Act and does not violate equal protection nor due process rights.

Congress, instead of defining "income and other financial resources, including both liquid and nonliquid assets," left that task to the expertise of the Secretary of Agriculture "in consultation with the Secretary of Health, Education, and Welfare" to establish uniform national standards of eligibility." 7 U.S.C. 2014. Beneficiaries of the Act were favored with "exemptions" and "deductions", the regulations concerning such, were promulgated under the "general" rule making authority since there was no provision in the Act directing the Secretary to make any exceptions to consideration of gross income. 7 U.S.C. 2013(c).

The Secretary in drafting the "exemption" of ten percent of the "training allowance" at that place *took into consideration any "transportation costs"*. "It was also determined that the administrative burden of determining and verifying the expenses

for the infinite variety of other outlays which may be incurred for education would be undue. Further, these other expenses, because of personal preference or otherwise, vary greatly from person to person and thus from household to household." The Secretary restricted the amount that could be "deducted" to items of tuition and mandatory school fees since the "student's ordinary cost of living" and "other expenses" because of personal preference or otherwise, vary greatly from person to person and thus household to household."[3]

It was well within the administrative judgment to allow a ten percent across the board "exemption" (in lieu of itemization of personal preference expenditures) in establishing said uniform national standards of eligibility. This recognition that food stamp recipients have some control over their food buying power meets the goal of Congress "that food stamps should be used to supplement, not substitute for, the normal buying power of low income families." Legislative History P. L. 91-671, U.S. Code Cong. and Adm. News, p. 6034.

This rationale alone should be sufficient, but there are others, as hereinafter noted.

The District Court draws two classifications, thusly, "Food stamp recipients who are receiving a transportation allowance constitute one class, those not receiving such an allowance the other." (Jur. St., Butz, p. 16a) It will be hereafter shown that those within the first classification are equally as well off food-wise as those who are not in any training program.

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[3]Letter from Claude T. Coffman, Deputy General Counsel, Department of Agriculture, dated March 11, 1974, filed with Motion for New Trial March 13, 1974, as part of the record herein. (see page 2, Appendix C, p. 7a, *infra*)

Those in the first group, receive a flat $44.00 "training allowance" in a State warrant separate from their ADC check whether or not they need it for commuting, i.e., those living where the school is located do not need this allowance for commuting and thus have $44.00 per month available for food purchases. Likewise, those living at a distance, such as Appellee Hein, has the free choice of moving to the site of the school and being able to use her $44.00 per month "training allowance" to purchase food (and without losing her ADC cash grant, *Shapiro v. Thompson* (1968) 394 U.S. 618.)

Everyone in this classification is treated alike, i.e., from this "training allowance" ten percent is "exempted" and the tuition and mandatory fees are deducted. (7 C.F.R. 271.3(c)(1)(iii)(a); 7 C.F.R. 271.3(c)(1)(iii)(f). These two analogous regulations appear in the Iowa State Department of Social Services Manual at VII-3-2264.1 and VII-3-16.(d).) Also, everyone in this classification pays $58.00 for $94.00 worth of stamps.

Likewise, those comprising the second classification receive equal treatment and everyone therein has the option to buy $96.00 worth of stamps for $46.00.

As between the two classifications, then, there is a compensating factor. By exercising their residency options, those within the first classification have $44.00 with which to purchase food for which they pay $12.00 more for food stamps than those in the second classification. One has the advantage in cash, the other in food stamp costs.

Another rationale for the regulation is that it could well serve to deter some individuals from unduly prolonging their education, thus achieving the goal of Congres "to assure" that "the job training provisions of the amendment are not abused". . .by "some individuals". . ."becoming near permanent students by attending training classes in a multiplicity of subjects." (Legislative

History Pub. Law 91-671, amending the Food Stamp Act of 1964, U.S. Code Congressional and Administrative News 91st Congress 2d Session p. 6035.) Such is a reasonable rationale within the meaning of *Dandridge v. Williams* (1970) 397 U.S. 471.

Another rational relationship to a legislative goal is to prevent an erosion of Iowa's wholly State-created training plan wherein the "training allowance" is granted.

This regulation approves Iowa's election to grant the flat monthly allowance rather than assume the burden of determining and verifying itemized travel expenses. Were itemization required, it could cause Iowa to eliminate the training allowance altogether. "Welfare benefits are not a fundamental right, and neither the State nor Federal Governments are under any sort of constitutional obligation to guarantee minimum levels of support." *Lavine v. Milne* (1976) 44 L.W. 4295, footnote 9. A similar rationale was sufficient in *Richardson v. Belcher* (1971) 404 U.S. 78.

The "irrebutable presumption" due process argument was likewise rejected in *Lavine v. Milne* supra and *Weinberger v. Salfi* 320 U.S. 749.

II

THE ORDER VIOLATES THE ELEVENTH AMENDMENT

The Court ordered the defendants to recompute the adjusted net income for each person presently in the Food Stamp Program and make a forward adjustment by reducing the price for coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially. (Jur. St., Butz, p. 23a) Making this adjustment for actual travel expenditures made by every individual who since 1969, received the flat "training allowance"; among the current 40,109 food stamp recipients, will be very costly. And, as the State of Iowa must pay

one-half of the costs (7 U.S.C. 2024), the judgment entered against the State of Iowa Commissioner of Social Services conflicts with *Edelman v. Jordon*, (1973) 415 U.S. 651, wherein this court at p. 677 said:

> "Though a §1983 action may be instituted by public aid recipients such as respondent, a Federal Court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief, *EX PARTE YOUNG, supra* (1908) 209 U.S. 123, and may not include a retroactive award which requires the payment of funds from the state treasury, *Ford Motor Co. v. Department of Treasury, supra* (1945) 323 U.S. 459."

The three District Court decisions cited by the District Court were decided prior to Edelman.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court note probable jurisdiction.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
Special Assistant
Attorney General

APPENDIX A
IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Nov. 7, 1975, R.E. Longstaff, Clerk,
U. S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

Notice of Appeal

Notice is hereby given that the state defendants hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. 1253 and 2101, from the judgment of the three-judge District Court entered in this action on October 10, 1975.

DATED at Des Moines, Iowa, this 8th day of December, 1975.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
Special Assistant
Attorney General

Attorneys for Defendants,
State of Iowa

APPENDIX B

PERTINENT CONSTITUTIONAL PROVISIONS

ELEVENTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 11

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

FIFTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 14

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL LAW

FOOD STAMP ACT

7 U.S.C. §2914

(c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. §2014

(b) The Secretary, *in consultation with the Secretary of Health, Education, and Welfare*, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household

income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility: (emphasis supplied.)

Employment of Able-bodied adults; excepted persons; refusal of work during strike or lockout; definition.

(c) Notwithstanding any other provisions of law, the Secretary shall include in the uniform national standards of eligibility to be prescribed under subsection (b) of this section a provision that each State agency shall provide that a household shall not be eligible for assistance under this chapter if it includes an able-bodied adult person between the ages of eighteen and sixty-five *(except* mothers or other members of the household who have the responsibility of care of dependent children or of incapacitated adults, *bona fide students* in any accredited school or training program, or persons employed and working at least 30 hours per week) who either (a) fails to register for employment at a State or Federal employment office or, when impractical, at such other appropriate State or Federal office designated by the Secretary, or (b) has refused to accept employment. . . . (emphasis supplied.)

FEDERAL REGULATIONS

7 C.F.R. §2713

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

7 C.F.R. §271.3(c)

(1) *Definition of income.* To compute maximum monthly income for purposes of determining eligibility:

(i) Income shall mean any of the following, but not be limited to:

(g) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(j) Scholarships, educational grants. . .

7 C.F.R. §271.3(c)

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(a) Ten percentum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month. This deduction shall be made before the following deductions.

(f) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation).

CODE OF IOWA, 1973

234.11 *Duties of the county board - food stamp program.* . . .

Each county shall participate in federal commodity or food stamp program.

249C.3 *Work and training program.* The commissioner shall establish a work and training program for persons and members of families receiving public assistance. . . .

249C.15 *Rules adopted.* The commissioner shall adopt rules to implement this chapter and achieve its purposes.

IOWA DEPARTMENT OF SOCIAL SERVICES MANUAL

FOOD STAMP PROGRAM

VII-3-2264.1 Deductions

Ten percent of income from compensation for services performed as to an employee or monies received as a training allowance not to exceed $30 per month per household. The ten percent shall be computed based on gross income from the following sources prior to any mandatory or other deductions.

VII-3-16 Income Deductions

d. The total payments which are made to cover specific training cost; i.e., babysitting, child care, books, tuition, etc., when the recipient is participating in a training program sponsored by local, county, state, or federal government.

Note: Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible.

INDIVIDUAL EDUCATION AND TRAINING PLANS

XIII-8-4 Payment

a. For a full time training plan the allowance is $44 per month.

APPENDIX C

Letter (page 2) from Claude T. Coffman, Deputy General Counsel, Department of Agriculture, dated March 11, 1974, filed as part of the record herein on March 13, 1974.

Further, the regulations go on to provide for certain deductions and exclusions from income for the purpose of determining net income for the Food Stamp Program. Section 271.3 provides, with respect to the issue of exclusions, in pertinent part as follows:

> The following shall not be considered income of the household: • • • (f) ten percentum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month.

This "exclusion" is designed to cover certain expenses which it may be anticipated will ordinarily be incurred by households in connection with their employment or training, including transportation costs.

Nowhere else in the Federal regulations governing the program is there any provision for any exclusion or deduction specifically for transportation costs. There is a deduction provided in section 271.3 of the regulations for: "Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships and veteran's educational benefits." These deductible expenses, as the regulations specifically provide, are limited to *tuition* and *mandatory* school fees. Other educational expenses may not be deducted in determining a household's net income.

When these regulations were originally under consideration, it was administratively determined that tuition and

mandatory fees are readily determinable, are uniform for all students, and are the primary costs of education (particularly college education) over and above a student's ordinary costs of living. It was also determined that the administrative burden of determining and verifying the expenses for the infinite variety of other outlays which may be incurred for education would be undue. Further, these other expenses, because of personal preference or otherwise, vary greatly from person to person and thus from household to household. For these reasons, the program regulations, and the related instructions of the Food and Nutrition Service which the State agencies are bound to follow by provision of the program regulations, limit educational expenses which may be deducted from income to the costs of (1) tuition, and (2) mandatory fees assessed by the educational institution.

In view of the above, it is the position of this Department that the only appropriate allowance by any State agency for transportation costs of participants in the program are those that are included in the. . .

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STATE APPELLENTS' BRIEF

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Jurisdiction

The order of the three-judge panel convened herein enjoined Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa from enforcing it's statewide regulation which deducted from income a "training allowance" for transportation expenses allotted to food stamp recipients under an approved State Individual Education Training Plan for recipients in the Aid to Dependent Children Program (ADC), and enjoined the Secretary of Agriculture from enforcing a like regulation 7 C.F.R. 271.3(c)(1)(iii)(f) on the ground that said State and Federal regulations conflict with the Food Stamp Act and deny due process and equal protection under the Federal Constitution. The judgment order was entered October 10, 1975, and appears in the Jurisdictional Statement of Appellant Earl Butz, as Exhibits A and B, pp. la-25a.

A notice of appeal to this Court was filed by these Appellants on the 8th day of December, 1975, copy of which appears as Appendix A, Jur. Stat. p. 1a. On February 2, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including March 7, 1976, and on March 2, 1976, granted a further extension of time to and including March 22, 1976.

Jurisdiction is conferred on this Court by 28 U.S.C. 1253 which permits a direct appeal by any party against whom an order for a permanent injunction was entered in a civil action required to be heard by a District Court of three judges.

This Court previously assumed jurisdiction of this case, then captioned as Kevin J. Burns, Commissioner, et al., vs. Karen Hein, et al., Sup. Ct. 73-1882. In the order being appealed from at that time, the three-judge panel had rejected the motion to interplead the Federal Government. Upon remand, Earl Butz, Secretary of Agriculture, was joined and the judgment now sought for review is entered against both the Commissioner of the Department of

Social Services of the State of Iowa and the Secretary of Agriculture.

Questions Presented

I. Whether 7 C.F.R. 271.3(c)(1)(iii)(f), and the analogous Iowa regulations, Iowa Department of Social Services Manual, VII-3-16(d), which disallows an itemized deduction for training transportation expenses for purposes of computing the income of food stamp recipients, conflicts with the Food Stamp Act or denies equal protection or due process in view of 7 C.F.R. 271.3(c)(1)(iii)(a), and Iowa's analogous regulation, which allow ten percentum of the training allowance, including transportation expense, as a uniform national standard?

II. Does this order contravene the Eleventh Amendment?

STATEMENT OF THE CASE

Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, et al., will adopt the Statement of the Case appearing in the brief of Appellant, Earl Butz, with the following additions:

Appellee, Hein, in addition to receiving food stamps, was also receiving an Aid to Dependent Children Grant (ADC) and a "training allowance" from Iowa's Individual Training and Education Program which originally allowed her $44.00 per month (plus tuition and fixed expenses) and increased to $66.00 per month by a change in Iowa's Departmental Rules and Regulations.)[1]

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[1] The regulation appeared in the July, 1972 Supp. Iowa Departmental Rules, later in the 1973 I.D.R. at p. 1026. An amendment increasing the "training allowance" to $60.00 per month was filed August 26, 1974 and the current "training expenses" regulation now appears in Iowa Administrative Code as 770-55.4. (App. D P6a, *infra*).

In the year 1969, Iowa, on its own initiative, created, funded, and still administers the Iowa Individual Education and Training Program, Chapter 249C, 1973 Code of Iowa.[2] Although primarily State funded, it lately has been receiving some federal funds under Title XX of the Social Security Act. *However, Section 249C.4 provides that the program "shall continue whether or not federal programs and federal funds are available."*[3]

In 1972, the Appellant, Commissioner of the State of Iowa and the State Legislative Rules Committee promulgated the following regulation:

> "58.4 (249C) Training Expenses. An allowance shall be made for expenses of training. This shall include tuition, books, fees, including graduation, GED testing and certificate fees, and any other fees required for completion of the training, and required uniforms and tools. A work and training allowance of forty-four dollars per month shall be provided a person participating in a full-time training plan . . . "

Also worthy of note at this point is the Food-Stamp Act definition of "training allowance" which reads (7 C.F.R. 270.2.(yy)):

> "(yy "Training allowance") means payments made on behalf of or received by a household member from the Work Incentive Program, [WIN] Manpower Development Programs or similar State or local government-sponsored vocational rehabilitation programs."

---

[2] (Code of Iowa, 1973, §234.11, 249 C.3, State App. Jur. Stat. p. 5a)

[3] The Iowa Legislature appropriated $400,000.00 and $420,000.00 for its 1976 and 1977 Work Training Program respectively.

STATUTES INVOLVED

Pertinent Constitutional Amendments, Federal Statutes, Regulations, State Statutes, Regulations and Manual material appear in the Appendix to the State Appellants' Jurisdictional Statement or Appendix *infra*, as shown by the Index and footnotes, *infra*.

ARGUMENT

I

THE REGULATION DOES NOT VIOLATE THE FOOD STAMP ACT AND DOES NOT VIOLATE THE DUE PROCESS NOR EQUAL PROTECTION PROVISIONS OF THE FEDERAL CONSTITUTION.

The offending regulation does not conflict with any express language in the Food Stamp Act and thus *Shea v. Vialpando* 416 U.S. 251 cited by the District Court (Jur. St. Butz, p. 15a) is not applicable. In *Shea* the decision turned on the term "any" appearing in § 402(a)(7) of the Social Security Act.

It will be seen that the offending regulation, 7 C.F.R. 271.3(c)(1)(iii)(f), "deductions"[4] when read together with the pertinent regulation 271.3(c)(1)(iii)(a),[5] "exemptions", in the light of the administrative explanation (all of which the District Court failed to consider), does not conflict with the purpose of the Food Stamp Act and does not violate equal protection nor due process rights.

Congress, instead of defining "income and other financial resources, including both liquid and nonliquid assets," left that

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[4] 271.3(c)(1)(iii)(f) - and

[5] 271.3(c)(1)(iii)(a) (State App. Jur. Stat. p. 5a)

task to the expertise of the Secretary of Agriculture "in consultation with the Secretary of Health, Education, and Welfare" to establish uniform national standards of eligibility." 7 U.S.C. 2014.[6] Beneficiaries of the Act were favored with "exemptions" and "deductions", the regulations concerning such, were promulgated under the "general" rule making authority since there was no provision in the Act directing the Secretary to make any exceptions to consideration of gross income. 7 U.S.C. 2013 (a) and (c). [6a]

The Secretary in drafting the "exemption" of ten percent of the "training allowance" at that place *took into consideration any "transportation costs"*. "It was also determined that the administrative burden of determining and verifying the expenses for the infinite variety of other outlays which may be incurred for education would be undue. Further, these other expenses, because of personal preference or otherwise, vary greatly from person to person and thus from household to household." The Secretary restricted the amount that could be "deducted" to items of tuition and mandatory school fees since the "student's ordinary cost of living" and "other expenses" because of personal preference or otherwise, vary greatly from person to person and thus household to household."[7]

It was well within the administrative judgment to allow a ten percent across the board "exemption" (in lieu of itemization of personal preference expenditures) in establishing said uniform national standards of eligibility. This recognition that food stamp recipients have some control over their food buying power meets

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[6](State App. Jur. Stat. p. 3a)

[6a] (Butz Jur. Stat. p. 3,4)

[7] Letter from Claude T. Coffman, Deputy General Counsel, Department of Agriculture, dated March 11, 1974, filed with Motion for New Trial March 13, 1974, as part of the record herein. (see page 2, Appendix C, p. 7a, State Appellants Juris. Stat.)

the goal of Congress "that food stamps should be used to supplement, not substitute for, the normal buying power of low income families." Legislative History P.L. 91-671, U.S. Code Cong. and Adm. News, p. 6034.

This rationale alone should be sufficient, but there are others, as hereinafter noted.

The District Court draws two classifications, thusly, "Food stamp recipients who are receiving a transportation allowance constitute one class, those not receiving such an allowance the other." (Jur. St., Butz, p. 16a) It will be hereafter shown that those within the first classification are equally as well off food-wise as those who are not in any training program.

Those in the first group, receive a flat $44.00 "training allowance" in a State warrant separate from their ADC check whether or not they need it for commuting, i.e., those living where the school is located do not need this allowance for commuting and thus have $44.00 per month available for food purchases. Likewise, those living at a distance, such as Appellee Hein, has the free choice of moving to the site of the school and being able to use her $44.00 per month "training allowance" to purchase food (and without losing her ADC cash grant, *Shapiro v. Thompson* (1968) 394 U.S. 618.)

Everyone in this classification is treated alike, i.e., from this "training allowance" ten percent is "exempted" and the tuition and mandatory fees are deducted. (7 C.F.R. 271.3(c)(1)(iii)(a); 7 C.F.R. 271.3(c)(1)(iii)(f).[8] These two analogous regulations appear in the Iowa State Department of Social Services Manual at VII-3-2264.1 and VII-3-16.(d).)[9] Also, everyone in this classification pays $58.00 for $94.00 worth of stamps.

8-9 (State App. Jur. Stat. App. p. 5a)

Likewise, those comprising the second classification receive equal treatment and everyone therein has the option to buy $96.00 worth of stamps for $46.00.

As between the two classifications, then, there is a compensating factor. By exercising their residency options, those within the first classification have $44.00 with which to purchase food for which they pay $12.00 more for food stamps than those in the second classification. One has the advantage in cash, the other in food stamp costs.

Another rationale for the regulation is that it could well serve to deter some individuals from unduly prolonging their education, thus achieving the goal of Congress "to assure" that "the job training provisions of the amendment are not abused" . . . by "some individuals" . . . "becoming near permanent students by attending training classes in a multiplicity of subjects." (Legislative History Pub. Law 91-671, amending the Food Stamp Act of 1964, U.S. Code Congressional and Administrative News 91st Congress 2d Session p. 6035.) Such is a reasonable rationale within the meaning of *Dandridge v. Williams* (1970) 397 U.S. 471.

Another rational relationship to a legislative goal is to prevent an erosion of Iowa's wholly State-created training plan wherein the "training allowance" is granted.

The Court, by its injunctive Order, which, at first blush, may look inoculous and harmless to Iowa's Work and Training Program (and indeed the WIN program and all other state and federal programs)[9a] could strike a death blow to the program.

[9a] 7 C.F.R. 270.2 (yy) (App. p. 3a, *infra*).

The requirements of the Court are severe. State and Federal defendants were enjoined *"from including in the monthly net income of any person**** any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining**** adjusted net income."*[10] This means accounting for the actual costs of "necessary commuting."

The words "training allowance connotes a grant of money for unaccountable items. The Secretary, in making the regulation under attack, respected the considered administrative judgment of Iowa in not burdening the administration nor burdening the "trainee" with accounting for each penny spent. The Iowa Legislature prefers to give a $66.00 per month allowance for transportation and meals at school on school-attendance days rather than pay the additional administrative costs in gathering the day-by-day travel expenditures each month which under the Food Stamp Regulations must be verified at least by affidavit and in some cases by office conferences, home visits, telephone calls. (§ 271.4 "Certification of household").[11]

A complete answer to the "rationally related" issue, then, could be that the Secretary, in *not* requiring an itemized statement of travel expenses (but instead allowing a flat ten percent of the "training allowance"), wanted to encourage the State of Iowa to continue its Individual Training and Work program by not interfering with the administrative procedures developed therein and with the expenditure of State monies; and, equally as important, he wanted to encourage trainees to continue their training programs who might terminate the same if required to itemize their actual expenditures in a sworn statement.

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[10] Butz Jurs. Stat. App. A p. 22a.

[11] (7 C.F.R. §271.4 App. p. 4a *infra*)

Analogous to this instant case are decisions of this Court, *Richardson v. Belcher* (1971) 404 U.S. 78 and the recent *National League of Cities, et al. v. Usery* (June 24, 1976) 44 L.W. 4974. In both cases States' rights were involved.

In *Richardson, supra,* (at p. 84) this Court in saying that the Federal Program there involved might "lead to the gradual weakening or atrophy of the State Programs" concluded by saying that since the "goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment."

This Court in *National League of Cities, supra,* in tracing early decisions commencing with *Texas v. White*, 7 Wall, 700, 725 (1869) wherein Chief Justice Chase declared that "the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States", continuing said at p. 4977:

> "In *Metcalf & Eddy v. Mitchell*, 269 U.S. 514 (1926), the Court likewise observed that "neither government may destroy the other nor curtail in any substantial manner the exercise of its powers." Id., at 523 . . . . "
>
> "We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner."

Iowa desires to retain its flat-sum "training allowance" which it had determined to be the only practical way to encourage persons to participate in its Work and Training program (instead of requiring trainees to account for each expenditure.)

Iowa does not waive its sovereign immunity and it does not feel it fair nor constitutionally permissible to be forced to expend money from its treasury in the Food Stamp program for what it years ago had deemed an administrative waste in its own program. This Court emphasized in *Rosado v. Wyman*, (1970), 397 U.S. 397, 420 that "New York is, of course, in no way prohibited from using only *state* funds according to whatever plan it chooses, providing it violates no provision of the Constitution."

As stated by this Court in *Lavine v. Milne*, (1976) 44 L.W. 4295, Footnote 9, "Welfare benefits are not a fundamental right, and neither the State nor Federal Governments are under any sort or constitutional obligation to guarantee minimum levels of support."

In addition to the holding in *Richardson, supra*, the "irrebutable presumption" due process argument was likewise rejected in *Lavine v. Milne, supra* and *Weinberger v. Salfi*, 320 U.S. 749.

II

THE ORDER VIOLATES THE ELEVENTH AMENDMENT

The three-judge panel cited three U.S. District Court decisions (all predating, *Edelman v. Jordon* (1973) 415 U.S. 651), in ordering Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, et al., (County Department and Secretary Butz) to make "forward adjustments," saying:

> "We conclude further that defendants should promptly recompute the adjusted net income for each person who is presently participating in Food Stamp Program and who has been paying a wrongfully high price for his food stamp

> allotment because his adjusted net income has been improperly computed for the reasons set forth above, and make a forward adjustment of the price of future stamps by reducing the price of food stamp coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially for food stamps wrongfully denied in the past. *Steward v. Butz* (W.D. Ky., 1973), 356 F. Supp. 1345, 1354; *Bermudez v. U.S. Department of Agriculture* (D. D.C. 1972), 348 F. Supp. 1279, 1281; *Tindall v. Hardin* (W.D. Pa., 1972), 337 F. Supp. 563, 566-56."[12]

In their Memorandum filed herein on April 12, 1974 prior to the remand, Appellants stated that prospective adjustments "in reality" are retroactive payments and cannot be made against the State of Iowa, citing *Edelman, supra.* Appellee, in her "Second Supplemental Memorandum on Issue of Relief" filed April 8, 1974, also discussed *Edelman, supra.* **However, in said order, which is being appealed from herein, the same three-judge court made no mention of *Edelman, supra,* nor of the bar of this judgment against the State of Iowa.** [Even if the Eleventh Amendment had not been raised, "the Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court." *(Edelman, supra,* p. 678 and *Ford Motor Co. v. Department of Treasury* 323 U.S. 459); and, the Eleventh Amendment is a bar to this judgment although State Officials instead of the State of Iowa were named parties, since any payments would be made by the State. *Edelman, supra* p. 663].

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[12] Butz Jur. Stat. App. A p. 23a, App. B p. 25a.

[13] 7 U.S.C. §2019 (b)(e)(2) App. p. 2a *infra)*

The Food Stamp Act requires the States to provide the administrative services of the Food Stamp Program (7 U.S.C. § 2019[13] (b)(e)(2)), and requires the States to pay one-half of the cost thereof. (7 U.S.C. § 2024).[14]

And, identifying those affected by the Order from the approximately 40,000 current food stamp caseload and recomputing their food-stamp costs for each month, will be no small task. The Court Order requires reimbursement of the amount for "necessary commuting expenses" to be included in the "deduction" (instead of ten percent of the training allowance under the regulations, (7 C.F.R. § 271.3 (c)(1)(iii)(a)).[15] Thus, each recipient would need to state under oath the number of school days in attendance, mode of transportation, (i.e. walking, driving, sharing rides, accepting gratituious rides, etc.,) for each school-day attendance for each month and the cost incurred on each day. (It is conceivable that some recipients would need to gather information as far back as 1969 when Iowa's Individual Training Program was commenced.)

The State worker would need to verify (7 C.F.R. 271.4 (a)(2)(iii)[16] all this information *before being able to start making the "forward adjustment"*. This kind of administrative detail is not that contemplated by the Secretary, (7 C.F.R. 271.1 (o)(ii)),[17] as claimed by Appellee in her Motion to Affirm filed herein. That regulation is restricted to corrections following administrative hearings and cannot be construed as authorization for this judgment against the State of Iowa. *Edelman, supra*, p. 673.4).

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[14] 7 U.S.C. §2024 App. p.2a *infra*)

[15] State App. Jur. Stat. App. p. 5a

[16] App. p.4a *infra*)

[17] App. p. 4a *infra*)

[In addition to an Eleventh Amendment violation, the Court Order calls for an impractical, and in some cases an impossible solution. For example, after all work has been completed by the State and the amount of the "forward adjustment" computed "for as many months as necessary so as to fully compensate the recipient", the food-stamp recipient may already have left the Food Stamp Program. All of this would produce administrative waste, for surely the Court did not intend to make someone eligible for food stamps when he is not otherwise eligible under the Food Stamp Act.]

Although the District Court referred to its mode of restitution as a "forward adjustment", (referred to as "equitable restitution" by the circuit court in *Edelman, supra,*) it is "in practical effect, indistinguishable in many aspects from an award of damages against the State." *(Edelman, supra,* p. 668).

> "Though a §1983 action may be instituted by public aid, recipients such as respondents, a Federal Court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief, *Ex Parte Young, supra,* (1908) 209 U.S. 123, and may not include a retroactive award which requires the payment of funds from the state treasury, *Ford Motor Co. v. Department of Treasury, supra,* (1945) 323 U.S. 459." *(Edelman v. Jordon,* 415 U.S. 677.)"

CONCLUSION

State Appellants sincerely believe that Appellee Hein has not stated a cause of action upon which relief can be granted and that the case should be remanded in both its prospective injunctive and retroactive aspects with instructions to dismiss the case.

Respectfully submitted.

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Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
Special Assistant
Attorney General

APPENDIX
IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Nov. 7, 1975, R.E. Longstaff, Clerk,
U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

APPENDIX A

FEDERAL LAW
FOOD STAMP ACT

7 U.S.C. § 2014

(c) . . . . . State-Appellants Jur. Stat. p. 3a.

7 U.S.C. § 2013

(c) . . . . . State-Appellants Jur. Stat. p. 5.

7 U.S.C. § 2019

"(b) The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issurance of coupons . . . "

(e)(2) " . . . (2) that the State agency shall undertake the certification of applicant households in accordance with the general procedures and personnel standards prescribed by the Secretary in the regulations issued pursuant to this chapter; . . . "

7 U.S.C. § 2024

" § 2024. State financing of administrative costs; Federal payments to State agencies; reports on effectiveness of administration of Food Stamp Program; qualified personnel.

(a) Except as otherwise provided in this section, each State shall be responsible for financing, from funds available to the State or political subdivision thereof, the costs of carrying out the administrative responsibilities assigned to it under the provisions of this Act.

(b) The Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs . . . "

APPENDIX B

7 C.F.R. § 271.3(c)
DEFINITION OF INCOME

(1) . . . . . State-Appellants Jur. Stat. pp. 2,5,7.

(iii) . . . . . State-Appellants Jur. Stat. pp. 2,5,7.

(f) . . . . . State-Appellants Jur. Stat. pp. 2,5,7.

(g) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

(h) Payments, except those for medical costs, made on behalf of the household by a person other than a member of the household;

7 C.F.R. § 271.3(c)

(a) . . . . . State-Appellants Jur. Stat. pp. 3,5,7.

7 C.F.R. § 270.2
DEFINITION OF TRAINING ALLOWANCE

"(yy) 'Training allowance' means payments made on behalf of or received by a household member from the Work Incentive Program, Manpower Development Programs or similar State or local government-sponsored vocational rehabilitation programs."

7 C.F.R. § 271.1
ADMINISTRATIVE HEARINGS

" (o) *Fair hearing.* Each Agency shall provide any household aggrieved by any action of the State agency . . . "

" (ii) An interview at initial certification and any subsequent certification with the applicant or his authorized representative in a personal contact in the office, in a home visit, or by a telephone call . . . "

" (11) The State agency is responsible for assuring that all hearing decisions are promptly implemented. When the hearing authority rules that a household has been improperly denied program benefits or has been overcharged for its coupon allotment, credit for such lost benefits or refund of the overcharge shall be promptly provided if appropriate. . . "

7 C.F.R. § 271.4
CERTIFICATION OF HOUSEHOLDS

"(a) *Household certification*—(1) *Certification of public assistance and general assistance households.* The State agency shall provide for the certification of households in which all members are included in a federally aided public assistance or general assistance grant, solely on the basis of information contained in an affidavit and the assistance case file."

" (2) *Certification of other households.* The State agency shall provide for the certification of other households by:

(i) Completion of the Application for Participation;

(ii) An interview at initial certification and any subsequent certification with the applicant or his authorized representative in a personal contact in the office in a home visit, or by a telephone call . . . "

APPENDIX C

CODE OF IOWA, 1973, 1975

249C.3 Work and training program. State-Appellants Jur. Statement. pp. 3,4.

249C.15 Rules adopted. State-Appellants Jur. Statement. pp. 3,4.

234.11 Duties of the county board-food stamp program . . . State-Appellants Jur. Statement. p. 5(a).

249C.4 "Cooperation. The program shall provide for maximum cooperation with and participation in federal programs having similar purposes, but the state work and training program shall continue whether or not federal programs and federal funds are available."

APPENDIX D

IOWA DEPARTMENTAL RULES

From the 1973 I.D.R. page 1026:

> "58.4(249C) Training expenses. An allowance shall be made for expenses of training. This shall include tuition, books, fees, including graduation, GED testing and certificate fees, and any other fees required for completion of the training, and required uniforms and tools. A work and training allowance of forty-four dollars per month shall be provided to a person participating in a full-time training plan . . . "

The Regulation was renumbered and currently appears in the Iowa Administrative Code as Number 770-55.4(249C).

> "55.4(249C) Training expenses. An allowance shall be made for expenses of training. This shall include tuition, books, fees, including graduation, GED testing and certificate fees, and any other fees required for completion of the training, and required uniforms and tools. A work and training allowance of sixty dollars per month shall be provided to a person participating in a full-time training plan. A full-time training plan consists of at least thirty hours per week. A person participating in a part-time training plan shall receive an allowance for transportation at the rate of fifteen cents per mile to and from the training site with a maximum of forty-five dollars per month. No allowance shall be made for any item that is being paid for through earnings that are diverted for that purpose."

Supreme Court, U. S.
FILED
NOV 26 1976
MICHAEL RODAK, JR., CLERK

NO. 75-1355

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.;

Appellants,

vs.

KAREN HEIN, ET AL.

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

STATE APPELLANTS' REPLY TO APPELLEES' BRIEF

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STATE APPELLANTS' REPLY TO APPELLEES' BRIEF

DISCUSSION

The theme throughout Appellee Hein's Brief, commencing with paragraph 1 of "Questions Presented" on page 2 is that the Secretary of Agriculture's Regulation substantially "reduced [her] Federal Food Stamp assistance" because she received $44 per month from the State of Iowa as a "training allowance".

But this contention is not true as shown by the record.

What actually occurred was that, because she received the $44.00 from the State of Iowa in Iowa's Individual Training program, her "cash discount" for food-stamps was reduced by $12.00 per month under the challenged Federal regulation in the Food Stamp Program, i.e., she paid $12.00 more for the same quantity of food stamps.

In her complaint, she recites that in September, 1972, she was approved for Iowa's training program and that "Plaintiff has been paying an additional $12 per month to buy her monthly amount of food stamps". (Jt. App. p. 19). In her affidavit, Appellee Hein alleges she is receiving training as a student nurse under the individual training program and further, under oath, states that she purchases food stamps "for which she pays $58 a month." The affidavit further reads that "the purchase price of the amount of food stamps Mrs. Hein was allotted to secure each month was increased by $12, raising said price from $46 to $58 per month." (Hein affidavit -- Hein Brief pp. 1b-2b, para. 4,5, and 9).

Also in her affidavit, Appellee Hein acknowledges receiving an AFDC grant as her principal source of income. This grant included shelter and food allowances. (The ADC grant was properly adjusted to reflect rental income.)

However, the $44.00 training allowance in no way reduced her ADC grant, *and more importantly, receipt of the training allowance in no way reduced the quantity of food stamp assistance.* **She bought the same maximum quantity of food stamps, $94.00 worth, (but at an increased $12.00 cost) after she received the $44 as she had been buying before.**

This case, then, supports Appellant State's contention that the Secretary's Regulation under attack achieved the goal set

forth in the Food Stamp Act in that, here, the most extremely impoverished ADC recipient and State sponsored "trainee" (assuming, although the record does not show, actually spent all her flat "training allowance" on school transportation), was financially able to *and did buy her maximum food stamp allotment*. She thereby *personally* met the Food Stamp Act goal by enjoying the "opportunity to obtain a nutritionally adequate diet". (7 U.S.C. §2014 (a)).

Thus, appellee Hein's contention that the Regulation "substantially reduced Federal Food Stamp assistance to a household solely on the basis of a household member's receipt of a government allowance for necessary commuting in connection with a government sponsored program" (Hein Brief p.2) is factually not true.[1]

If appellee Hein is not factually disadvantaged to any substantial degree by the Regulation, certainly the trainees at the other end of the spectrum, being those who spend little, if any, of their training allowance" for travel or other "necessary" school expenses (since tuition, books, fees and child care costs are paid in addition to the flat allowance), are certainly not disadvantaged by a denial of an opportunity to obtain a

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[1] To attempt to explain how this Appellee was financially able to pay for her "full allotment" of food stamps after she began receiving the $44 monthly training allowance, appellee Hein may point to the stipulation signed by her attorney of record, Jt. App. 26. The record is that appellee Hein was never called to testify so she was never under oath during the trial. What appears in the stipulation her attorney signed for her was that "if "Ms. Hein were called to testify," she would testify as therein stated. However, under oath by affidavit and in her Complaint (see supra p. 2 hereof) she repudiated the stipulated allegation that "she had been forced to . . . (e) Buy less than her allotted food stamp coupons." (This impeachment of that material statement throws a cloud on the other matters it is claimed she would testify to if called as a witness.)

"nutritionally adequate diet." Without any disparaging inferences intended, appellant State suggests that what Appellee seems to be seeking is an *individualized Regulation*, for, while she does not so state in her brief, exactly, the thrust of her attack could be construed to be a challenge to both the statutory and constitutional right of Congress to authorize, and that of a Federal Secretary to promulgate, *broad Regulations*, including averaging in the welfare field. But this Court has answered such questions in *Dandridge v. Williams*, 397 U.S. 471, *Jefferson v. Hackney*, 406 U.S. 535, and, lately, in *Mathews v. Lucas*, (1976) 96 S. Ct. 2755 ——U.S. ——.

Appellee Hein claims that the challenged regulation "Undeniable discouraged participation in state sponsored training programs by substantially reducing recipients' food stamp assistance solely on the basis of allowances for necessary educational travel that made it possible for them to participate in such programs." Continuing, she states "that this was a clear violation of 7 U.S.C. §2014 (c)'s indication that education and training is not to be discouraged by the denial of food stamp benefits." (Hein Brief p. 18).

The most obvious answer is, that the Regulation does not have the effect of discouraging participation in both the food-stamp program and Iowa's Individual training program. Since the filing of this complaint, 3,407 persons have had the advantages offered by Iowa's program, including appellee Hein, who was not discouraged from completing her schooling by reasons of said Regulation. [2]

[2] Also, food stamp recipients have not been discouraged from taking advantage of the other training programs, State or Federal, being offered. Since 1973, when this Petition was filed, there have been at some time or other, fourteen different available training programs in the State of Iowa alone. Still in operation are seven (7), to-wit: Individual Education and Training Plan Programs, WIN (Work Incentive in the ADC program), Job

Continued page 5

As noted by Appellee Hein, (Hein Brief p. 16) Congress set forth its purposes and objectives in 7 U.S.C. §2013 (a). Among those stated purposes and objectives there is no mention of fostering government educational or training programs.

It is too much to infer, as appellee Hein does, that in section 7 U.S.C. §2014 (c) there are "provisions evidencing Congressional intent to encourage education and training toward self-support." 7 U.S.C. §2014 (c) merely excuses food-stamp candidates, enrolled in a legitimate training program with bona fide intentions, from being denied food stamps if they are not either working or attempting to secure employment. The legislative history behind that regulation shows that Congress did not want a Regulation that could serve to encourage some individuals from unduly prolonging their education "in a multiplicity of subjects". (See full discussion of legislative history, p. 8, State Appellants' Brief.)

Appellee Hein states that, "For those who are covered by the District Court's Order, the Appellants' administrative burdens are considerably less onerous with regard to their necessary travel allowances than with regard to education-related child expenses." (Hein Brief p. 29) As will be seen by references to Page XIII-8-4 in both the 1972 and the current 1974 Employee's Manual of the Iowa Department of Social

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[2] Continued from page 4

Corp Program, Veterans Administration Training Program, GI Benefits Program, Vocational Rehabilitation and CETA (Comprehensive Employment and Training Act) currently operated under the Iowa Governor's office and which incorporated the other seven, to-wit: New Careers Program, Operation Mainstream Program, MDTA Program (Manpower Development and Training Act) NAB-JOBS (National Alliance of Businessman - jobs), Occupational Upgrading Program, Concentrated Employment Program, New Horizons Program.

Services,[3] *the vendor of child care services* (and not the food-stamp worker) is the person required to make the day-by-day computation of child care costs for each month. Thus, the food stamp worker need only record the vendor's figure for child care as opposed to personally computing and verifying the actual day-by-day travel expenses.

Continuing with erroneous conclusions, Appellee Hein states that "the District Court's Order does not require payment of any additional funds for Individual Education and Training Plans, and has no other impact on the program under which such plans are funded" (Hein Brief p. 29).

The Court Order does affect the State's treasury and does have an impact on Iowa's individual training program.

First, as to the retroactive aspect, Appellant State points out that since the time the complaint was filed in 1973 it has paid $44 or as now, $60 per month to each trainee. Thus, the State has already passed on to the trainee the administrative costs that would have been incurred in making detailed accountings of travel costs. Paying such administrative savings to the trainees served as an incentive for the trainee's participation in Iowa's program.[4] Now, under this Order, the

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[3] Iowa Department of Social Services Employees' Manual, Page XIII-8-4 (as of February 11, 1972 and as of January 15, 1974, Appendix 1a.

[4] Appellee misconceives the reason for granting the "training allowance" in asserting that it is State's administrative judgment that participants in the program would have additional expenses of that magnitude. (Hein Brief p. 13 and 36). Obviously, some will have little or no additional training expenses since tuition and other fixed fees, child care costs, etc., are paid by the State in addition to the allowance.

Court would have the State pay both administrative costs *and* the incentive payment.[5] This requires "double payment" which is inequitable, and requires undue hardship upon the State. "Duplicated taxes, or burdens that approach them, are recognized hardships that government, state or national, may properly avoid."[6] *Steward Machine Co. v. Davis*, 301 U.S. 548 at 589.

Second, as to the future operation of Iowa's Individual Training Program and the future operation of the food-stamp program in Iowa, for persons simultaneously participating in both, there is an additional and unanticipated burden upon the State, financial and otherwise. Under the Court Order, the State would be required to pay one-half of the costs in computing and verifying daily travel expenditures while at the same time paying a "training allowance" in lieu of administrative costs.

This court-ordered requirement could discourage the State of Iowa from passing on to the trainee the administrative costs

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[5] Further, as to the retroactive aspect of the Order, the State points out the following, Appellee Hein claims that re-computing the food stamp costs for each month are administrative costs "of the kind which states much expect to incur as a result of their participation in the Food Stamp Program." She also claims they are "merely ancillary to a valid prospective order, and are clearly anticipated by the Food Stamp Act." (Hein Brief p. 42). This is obviously not true. In the years the original computation was made, and from appropriations made by the Iowa legislature in those years, the State paid the anticipated administrative costs. *This Order calls for additional sums from the State treasury for re-computations.*

[6] Iowa has had 3,407 trainess in its program since 1973 which records would need be compared with current food stamp files of approximately 40,000. Once identified, it would be necessary to re-calculate the certification for each month after ascertaining the actual daily expenses for each trainee food-stamp recipient and make the verification required in the food-stamp regulations. One State official believes it would take 27,256 man hours, or 3,407 days averaging 8 hours per day per case (or a ten year project for a single staff member) to comply with the Court Order.

as an incentive to participate in its training program in the future. And, the trainee may be discouraged from participating in Iowa's training program if she or he does not receive the unitemized allowance. Likewise, and equally as important, the trainee could be discouraged from participating in the food-stamp program if required to keep records of verified actual daily travel expenses.

The Regulation here, contrary to the effect of the Court Order, would preserve the status quo of Iowa's individual training program. A regulation in a similar situation, *Richardson v. Belcher*, (1971) was said to be rationally based so as not to interfere with "the efforts of the states which might lead to the gradual weakening or atrophy of State programs." 404 U.S. 78 at 84.

CONCLUSION

State Appellants respectfully pray that the Secretary's challenged Regulation be declared valid under congressional intent and under the language of the Food Stamp Act; and pray that it be declared constitutionally permissible. They further pray that this Court vacate the decision and order of the Court below in both its prospective and retroactive aspects.

Respectfully submitted,

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November 23, 1976 Attorneys for State Appellants

APPENDIX

IOWA DEPARTMENT OF SOCIAL SERVICES

EMPLOYEES' MANUAL, Page XIII-8-4

(as of February 11, 1972)

Child care allowance — this allowance should follow the WIN guidelines. The day care *vendors will submit their request for payment* to the counties on Vendors Request for WIN Day Care Payment, Form WI-5101-5 (revised 4-6-71).

(as of January 15, 1974)

INDIVIDUAL EDUCATION AND TRAINING PLAN

Child Care

Child care services must be available and provided to all individuals requiring child care prior to participation in an Individual Education and Training Plan. The caseworker responsibilities regarding child care are outlined in Chapter 5 — Child Care of this section. Please note the following exception: *Individual Education and Training Plan Vendor's Request for Day Care Payment will be listed and submitted to the State Office for payment* on the Certification for Day Care Payments, Form AA-2239-0 (Yellow form). Instructions for the use of this form appear in the Appendix. (Emphasis added)